

**ALABAMA DEPARTMENT
OF ENVIRONMENTAL MANAGEMENT**

In The Matter Of:)

Exprezit! Convenience Stores 2009, LLC)

Exprezit! #927)

UST Facility ID No. 21694-069-017905)

Webb, Houston County, Alabama)

**PROPOSED
ADMINISTRATIVE ORDER**

No. _____

FINDINGS

Pursuant to the provisions of the Alabama Environmental Management Act, §§ 22-22A-1 to 22-22A-16, Ala. Code (2006 Rpl.Vol.); the Alabama Underground Storage Tank and Wellhead Protection Act, §§ 22-36-1 to 22-36-10, Ala. Code (2006 Rpl.Vol.); and the ADEM Administrative Code of Regulations (hereinafter "ADEM Admin. Code r.") promulgated pursuant thereto, the Alabama Department of Environmental Management (hereinafter the "Department" or "ADEM") makes the following FINDINGS:

1. Exprezit! Convenience Stores 2009, LLC (hereinafter the "Owner") is the registered owner of a regulated underground storage tank (UST) facility located at Exprezit #927, 7729 Highway 52, Webb, Houston County, Alabama, designated as ADEM Facility I.D. Number 21694-069-017905.

2. ADEM is a duly constituted agency of the State of Alabama pursuant to §§ 22-22A-1 to 22-22A-16, Ala. Code (2006 Rpl.Vol.).

3. Pursuant to § 22-22A-4(n), Ala. Code (2006 Rpl.Vol.), ADEM is the State Environmental Control Agency for the purposes of federal environmental law, including 42 U.S.C. §§ 6991 to 6991(m), as amended.

4. ADEM is authorized to administer and enforce the provisions of the Alabama Underground Storage Tank and Wellhead Protection Act, §§ 22-36-1 to 22-36-10, Ala. Code (2006 Rpl.Vol.).

5. Based upon an inspection dated June 27, 2012 of the UST facility and/or a review of facility records, the Department has documented the violations alleged herein.

6. Pursuant to ADEM Admin. Code r. 335-6-15-.14, owners of new and existing UST systems must provide a method or combination of methods of release detection. Owners are required to submit to the Department a description of the type of release detection method used at each UST site.

7. Pursuant to ADEM Admin. Code r. 335-6-15-.17(h), the Department has approved Statistical Inventory Reconciliation (SIR) as an accepted method of leak detection to satisfy the leak detection requirements of ADEM Admin. Code r. 335-6-15-.14. The Owner had failed to submit any SIR data as of May 14, 2012.

8. Pursuant to ADEM Admin. Code r. 335-6-15-.13(a)(6), the owners and operators of UST systems must submit annual summary of test results no later than January 31 of each year for any approved method of leak detection under Rule 335-6-15-.17(h). This includes owners using SIR as a primary method of leak detection. The Owner failed to submit the 2011 SIR Annual Summary Report before January 31, 2012.

9. Pursuant to ADEM Admin. Code r. 335-6-15-.45(3), upon implementation of delivery prohibition, it shall be unlawful for any regulated substance deliverer to deliver a regulated substance, and it shall be unlawful for owners and operators of UST systems to accept delivery of a regulated substance to an underground storage tank facility that is under delivery prohibition.

10. The Owner accepted delivery of a regulated substance to their underground storage tank facility that was under delivery prohibition on two occasions.

11. A Notice of Delinquency (NOD) dated November 28, 2011, was issued by the Department requiring the Owner to submit verification that the unleaded catchment basin has been emptied of water, debris and/or fuel, spill catchment basin tests and annual line leak detector tests within thirty days.

12. On January 5, 2012, upon the Owner's failure to respond to the NOD dated November 28, 2011, the Department issued a Notice of Violation (NOV) again requiring the Owner to submit verification that the catchment basins have been emptied of water, debris and or fuel, spill catchment basin tests and leak detector tests within thirty days.

13. On May 14, 2012, upon the Owner's failure to respond to the NOD dated November 28, 2011, the NOV dated January 5, 2012; the Department issued a Notice of Proposed Delivery Prohibition for failure to submit the 2011 SIR Annual Summary Report, failure to submit annual line leak detector tests and failure to submit verification that the catchment basins have been emptied of water, debris and/or fuel.

14. On June 13, 2012, the Department placed the facility on delivery prohibition due to the Owner's failure to demonstrate compliance pursuant to the Departments May 14, 2012, Notice of Proposed Delivery Prohibition.

15. On June 27, 2012, a Department inspection revealed that the facility had received fuel on June 14, 2012, and on June 19, 2012, while on delivery prohibition.

16. On June 28, 2012, based on the Department's receipt of the 2011 SIR report, leak detector tests and verification that the spill catchment basins were emptied the Facility was removed from the Delivery Prohibition List.

17. Pursuant to § 22-22A-5(18)(c), Ala. Code (2006 Rpl.Vol.), in determining the amount of any penalty, the Department must give consideration to the seriousness of the violation, including any irreparable harm to the environment and any threat to the health or safety of the public; the standard of care manifested by such person; the economic benefit which delayed compliance may confer upon such person; the nature, extent and degree of success of such person's efforts to minimize or mitigate the effects of such violation upon the environment; such person's history of previous violations; and the ability of such person to pay such penalty. Any civil penalty assessed pursuant to this authority shall not exceed \$25,000.00 for each violation, provided however, that the total penalty assessed in an order issued by the Department shall not exceed \$250,000.00. Each day such violation continues shall be a separate violation.

In arriving at the civil penalty assessed in this matter, the Department has considered the following:

A. Seriousness of the Violation:

The Owner/Operator did not ensure that the facility was not on delivery prohibition and did not comply with the Department's release detection reporting requirements. The violations impede the Department's regulatory authority over USTs for threats to public health, safety and the environment.

B. Standard of Care:

The Owner/Operator did not exhibit a standard of care commensurate with applicable regulatory requirements.

C. Economic Benefit Which Delayed Compliance May Have Conferred:

The Department has been unable to ascertain if there has been a significant economic benefit conferred on the Owner.

D. Efforts to Minimize or Mitigate the Effects of the Violation Upon the Environment:

There are no known environmental effects as a result of the alleged violations.

E. History of Previous Violations:

The Owner/Operator does have a history of previous violations.

F. Ability to Pay:

The Owner/Operator has not alleged an inability to pay the civil penalty.

- G. Other Factors: The Department has carefully considered the six statutory penalty factors enumerated in Ala. Code § 22-22A-5(18)c (2006 Rplc. Vol.), as well as the need for timely and effective enforcement, and has concluded that a civil penalty in the amount of \$7,500.00 is appropriate, in keeping with a penalty range imposed by the Department for similar violations at other UST facilities, as follows (see attachment A):

<u>Violation Type</u>	<u>Penalty Range for Violation Type</u>
Accepted delivery of a regulated substance to a facility on delivery prohibition;	\$0 - \$25,000
Owner failed to provide method of release detection;	\$0 - \$25,000

ORDER

Based on the foregoing FINDINGS and pursuant to §§ 22-22A-5(1), 22-22A-5(10), 22-22A-5(12) and 22-22A-5(18), Ala. Code (2006 Rpl.Vol.), it is hereby ORDERED:

A. That, within forty-five days of the effective date of this Administrative Order, the Owner shall pay to the Department a civil penalty in the amount of \$7,500.00 for the violations cited herein. Failure to pay the civil penalty within forty-five days of the effective date of this Administrative Order shall constitute cause for the Department to file a civil action in the Circuit Court of Montgomery County, Alabama. Payment shall be made by Cashier's Check or Money Order, payable to the Alabama Department of Environmental Management, and addressed as follows:

Office of General Counsel
Alabama Department of Environmental Management
P.O. Box 301463
Montgomery, Alabama 36130-1463

B. That within fifteen days of the issuance of this Administrative Order the Owner shall file a Notification for Underground Storage Tanks (ADEM Form 279) with current information on the UST facility including owner name and contact information.

C. That, should any provisions of this Administrative Order be declared by a court of competent jurisdiction or the Environmental Management Commission to be inconsistent with Federal or State law, and therefore unenforceable, the remaining provisions hereof shall remain in full force and effect.

D. That, except as otherwise set forth herein, this Administrative Order is not and shall not be interpreted to be a permit or modification of a permit under Federal, State or local law, and shall not be construed to waive or relieve the Owner of the obligation to comply in the future with all applicable law.

E. That the issuance of this Administrative Order does not preclude the Department from seeking criminal fines or other appropriate sanctions or relief against the Owner of the violations cited herein.

F. That failure to comply with the provisions of this Administrative Order shall constitute cause for commencement of legal action by the Department against the Owner for recovery of additional civil penalties, criminal fines, or other appropriate sanctions or relief.

ORDERED and ISSUED this the _____ day of _____, 2012.

Lance R. LeFleur
Director

ATTACHMENT A

Penalty Synopsis

Exprezit! Convenience Stores
548 Mary Ester Cutoff PMB #286
Ft Walton Beach, FL 32548
Exprezit! #927
7729 Hwy. 52
Webb, AL 36376
21694-069-017905

Violation*	Number of Violations*	Seriousness of Violation & Base Penalty*	Standard of Care*	History of Previous Violations*
ADEM Admin Code r. 335-6-15-.45(3) states that it shall be unlawful for any regulated substance deliverer to deliver a regulated substance, and it shall be unlawful for owners and operators of UST systems to accept delivery of a regulated substance to a UST facility that is under delivery prohibition.	1	\$2,500	\$2,500	\$0
2nd Delivery	1	\$250	\$250	\$0
ADEM Admin Code r. 335-6-15-.13(a)6. states owners and operators must submit annual summary of test results no later than January 31st of each year for any approved method of leak detection under rule 335-6-.17(h) as required by the Department.	1	\$500	\$500	\$1,000
Totals:	3	\$3,250	\$3,250	\$1,000

Economic Benefit*: \$0
Mitigating Factors*: \$0
Ability to Pay*: \$0
Other Factors*: \$0

Total Civil Penalty: \$7,500

Footnotes

* See the "Findings" of the Order for a detailed description of each violation and the penalty factors